

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

MICHAEL ALBERT,

Plaintiff,

v.

HEIDI ABBOT, et. al.,

Defendants.

CV-17-69-H-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Michael Albert (“Albert”) filed a complaint on June 12, 2017, alleging six civil rights and sexual harassment claims arising under the Eighth and Fourteenth Amendments. (Doc. 2.)

United States Magistrate Judge John Johnston issued an Order and Findings and Recommendations in this matter on November 6, 2017. (Doc. 10.) Judge Johnston found that Albert has a “reasonable opportunity to prevail on the merits”

of claims I, II, III, IV, and VI, and ordered Defendants to respond. (Doc. 9 at 1.) Judge Johnston further recommended that the Court dismiss Albert's fifth claim, which alleges sexual harassment. (Doc. 9 at 5.)

No party filed objections to Judge Johnston's Findings and Recommendations. The Court has thus reviewed the Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

I. DISCUSSION

Judge Johnston recommends that the Court dismiss Albert's sexual harassment claim because Albert fails to state a claim for relief. (Doc. 9 at 3.) Albert alleges that Defendant Smidt, a female corrections officer, "asked if [he] wanted a prison wife." (Doc. 2 at 22.)

As Judge Johnston notes, verbal harassment alone is insufficient to rise to the level of an Eighth Amendment violation. *Austin v. Terhune*, 367 F.3d 1167, 1171-72 (9th Cir. 2004) (citations omitted). Therefore, Albert has failed to state a cognizable claim for relief with regard to Count V.

II. ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 9) is **ADOPTED IN FULL**.

Count V of the Complaint raising allegations of sexual harassment is
DISMISSED. Defendants Smidt, Wood, Noll, Pentland, and Cobban are
DISMISSED.

DATED this 28th day of November, 2017.



Brian Morris
United States District Court Judge